

**DECISION: I-06-0054-01**

**FILE: 2006-0054**

**OTTAWA, JULY 7, 2006**

**LINDA MACDONALD**

**COMPLAINANT**

**AND**

**THE DEPUTY HEAD OF SERVICE CANADA**

**RESPONDENT**

**AND**

**OTHER PARTIES**

**MATTER** Request for extension of time

**DECISION** The request is granted

**DECISION RENDERED BY** Guy Giguère, Chairperson

**INDEXED** *MacDonald v. Deputy Head of Service Canada et al.*

**NEUTRAL CITATION** 2006 PSST 0002

## **REASONS FOR DECISION**

### **BACKGROUND**

[1] On June 16, 2006, Linda MacDonald filed a complaint with the Public Service Staffing Tribunal (the Tribunal) in respect of an acting appointment resulting from a non-advertised process (No. 2006-CSD-ACIN-NS-SC-12959), made on or about June 5, 2006, at the Service Canada Centre. The Public Service Staffing Advertisements & Notifications Web page indicated that the complaint period closing date was June 20, 2006.

[2] The complaint was received by the Tribunal on June 27, 2006. The Tribunal informed the complainant that her complaint had been received seven days after the complaint period closing date of June 20, 2006. On June 27, 2006, the complainant filed by electronic mail a request for an extension of the time period for filing her complaint in order to accommodate the late arrival of her complaint. Ms. MacDonald explained in her request that she mailed her complaint on the same day that she filed it, which was June 16, 2006. The envelope containing the complaint originated from Dartmouth, Nova Scotia, and the postage meter marking that appears on it indicates June 16, 2006.

[3] Michelle Ward, Corporate Human Resources Consultant, responded to the request for extension of time on behalf of the Deputy Head. Ms. Ward submitted that the closing date for filing the complaint should be respected. She submitted that the Tribunal should not allow the extension of time as the complaint was filed after the closing date of the complaint period. As well, Ms. Ward submitted that no reasons explaining the late filing were provided nor were any exceptional circumstances demonstrated by the complainant.

## ANALYSIS

[4] Section 10 of the *Public Service Staffing Tribunal Regulations*, SOR/2006-6 (the *Regulations*) provides that a complaint may be made to the Tribunal no later than 15 days after the day the person is notified of the appointment or proposed appointment to which the complaint relates. Section 10 of the *Regulations* reads as follows:

10. A complaint by a person may be made to the Tribunal

(a) except where paragraph (b) applies, no later than 15 days after the day on which the person receives notice of the lay-off, revocation, appointment or proposed appointment to which the complaint relates; and

(b) if the notice of the lay-off, revocation, appointment or proposed appointment to which the complaint relates is a public notice, no later than 15 days after the date of the notice.

[5] However, this strict time limit can be put aside, pursuant to section 5 of the *Regulations*, if the Tribunal determines that it is in the interest of fairness. Section 5 reads as follows:

5. The Tribunal may, in the interest of fairness, extend any time specified in these Regulations.

[6] As determined by the Federal Court of Appeal in *Allard v. Canada (Public Service Commission)*, [1982] 1 F.C. 432, and *Lalancette v. Canada (Public Service Commission Appeal Board)*, [1982] 1 F.C. 435, the time limit to file a complaint is a strict limit. A complaint is not brought merely by signing a complaint or giving such a complaint to a messenger; it should reach the Tribunal within the 15-day time limit. Nevertheless, according to the Federal Court in *Lalancette, supra*, it would seem *fair* to consider that a complaint has been brought pursuant to section 10 of the *Regulations* as soon as the complaint is mailed, if the mailing date can be easily proven.

[7] The right to complain to the Tribunal is exercised by persons anywhere in Canada and sometimes even outside it. The complainant explained in writing that she mailed her complaint from Nova Scotia on June 16, 2006, which was four days prior to the closing date for filing a complaint. This is confirmed by the postage meter marking on the envelope. No explanation was provided by the complainant as to why it took 11 days for the complaint to reach the Tribunal. It could have been misdirected or delayed in mail processing. Fortunately, the postage meter marking stamped June 16, 2006 appears on the envelope. Had there been no postage meter marking or had it not been legible, the complainant may not have had any additional evidence to substantiate her claim that she mailed the complaint on June 16, 2006 in which case the Tribunal may have reached a different decision.

[8] Therefore, it is in the interest of fairness that the request for extension of time be granted when a complaint is mailed within the 15-day time limit and that the date of mailing can be easily proven. Complainants would be well advised when sending a complaint to the Tribunal by mail to not rely solely on postmarks or postage meter markings. If complainants choose to send a complaint by mail, the Tribunal encourages them strongly to confirm by sending a copy by email or fax within the time limit for filing a complaint.

[9] For all these reasons, the request for extension of the time period to file a complaint is granted pursuant to section 5 of the *Regulations*.

Guy Giguère  
Chairperson

PARTIES OF RECORD

Tribunal File:	2006-0054
Style of Cause:	Linda MacDonald and the Deputy Head of Service Canada <i>et al.</i>
Hearing:	Written request decided without the appearance of the parties
Date of Reasons:	July 7, 2006